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Swimming Against the Tide: The Challenge of Legal Publishing in the English Speaking Caribbean

IAN RANDLE*

Historical Background

Book Publishing in the English speaking Caribbean is a relatively recent phenomenon. Prior to the 1960s there were sporadic attempts by individuals and even large firms like the Gleaner Company's Pioneer Press in Jamaica, but some semblance of sustained publishing activity did not come to the region until the post-independence period. In that first immediate post-independence period, the initiative to set up publishing operations came from British educational publishers who established either wholly-owned subsidiaries or went into partnerships with local business interests like the Collins/Sangster imprint in Jamaica. For the most part, these were token operations. They were also essentially the companies' marketing and sales outlets as all publishing decisions, as well as editorial, design and production

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work, remained in the UK. Consequently there was no skills transfer or structured training in any aspect of book publishing.

Once the UK educational publishers realized that it was not necessary to have a local establishment maintain their dominance of the textbook market they withdrew from the region and reverted to publishing directly from their home base, exporting to the Caribbean. Essentially, that remains the pattern today.

Locally-owned and established publishing firms began to emerge towards the end of the 1980s, encouraged in part by the development of new national curricula at the elementary and lower secondary school levels. These required books with increased sensitivity to local culture and the inclusion of country specific information that could not be easily and cheaply produced by UK publishers as they had previously done for a Pan-Caribbean curricula. The period also saw the establishment of a few small trade publishing houses in Jamaica and Trinidad, but the two most significant entrants to the Caribbean publishing scene were Ian Randle Publishers and the University of the West Indies Press, both scholarly publishers at the start of the decade of the 1990s.

While the industry has shown impressive growth over the last 15 years, particularly in the areas of school and tertiary level textbooks and scholarly monographs, the growth of book publishing in the region remains restricted by a number of factors. These include:

- (i) small size of the market,
- (ii) continued and totally unrestricted competition from UK and US based conglomerate publishers and media houses,
- (iii) undercapitalization and limited equity base,
- (iv) shortage of skills in all areas of publishing,
- (v) slow pace of access to technology, and
- (vi) failure of proper succession planning.

Although we can boast that no overseas interests have any form of equity in any of the local publishing firms, these single proprietorships or family-owned establishments have, by their restricted equity arrangements, contributed to the slow pace of their growth and development.

Legal Publishing

If book publishing generally has had a relatively recent history, legal publishing has an even more recent vintage. It may be dated to just 1996 with the establishment of the Caribbean Law Publishing Company (CLP), a joint venture between Ian Randle Publishers of Jamaica and Juta of Cape Town in South Africa. Prior to that date, the only volume publishing to emerge from the region could be attributed to the Faculty of Law of the University of the West Indies which published the *Caribbean Law Journal* and the *Caribbean Law Bulletin*. CLP was established as a publisher of primary legal materials and was able to make an immediate impact given that the major jurisdictions of Jamaica, Trinidad and Tobago and the Windward and Leeward Islands which together constitute the Organization of Eastern Caribbean States (OECS) had not published law reports for several decades. Thus the publication of some sixteen volumes of the Jamaica Law reports over a 3-year period between 1997 and 2000 by CLP under an arrangement with the Jamaica Bar Association with funding from USAID was a major achievement by this young company. The impact was made even more dramatic by the availability of all the new volumes electronically on CD-ROM; and when the entire Jamaican statute book was also made available in this format, it effectively ushered technology into Jamaican law firms, courts and corporate offices.

The demonstrated effect of what can only be described as the mass publication of the Jamaica Law Reports led to arrangements with the Supreme Courts for Trinidad and Tobago and the OECS to publish their Law Reports, the Trinidad and Tobago Tax Court for the publication of its tax cases, the Trinidad and Tobago Industrial Court for the publication of its Reports (forthcoming), and the Civil Procedure Rules of the Supreme Courts of Jamaica. This is an impressive array of primary materials.

In recent years the pace of publishing our primary materials has slowed somewhat, although in the interim we have added a significant number of monographs and even a few textbooks. This slowdown is due to several factors, some of which are the common afflictions relating to publishing in the region as outlined earlier. However, legal publishing in the Caribbean has its own peculiar challenges. The title of this presentation "*Swimming Against the Tide*" is intended to dramatize our greatest obstacle: the mesmerizing influence of the English legal tradition. This is manifested in the almost slavish allegiance of professionals in government, public service, private practitioners, universities and, yes, even law librarians to the perceived superiority of UK published law materials.

The pervasiveness of this umbilical attachment to materials published in Britain is nowhere better demonstrated than in the annual purchase by governments of the West Indian Law Reports in preference to their own Law Reports and the fact that the WILR continues to receive uncritical support in spite of its inadequacies (not to mention its cost) when it could very easily be replaced by a simple decision by the Attorneys-General of the region. If I seem to beat up unnecessarily on a publication by one of the world's largest media conglomerates which contributes nothing to this region, it is because we rely on our own governments' purchase of regionally published law reports to make them viable and sustainable. If, for example, the Jamaican government had spent the same amount of money it did purchasing volumes of the WILR on the Jamaican Law Reports instead, then we would not have had a three-year break between the publication of the last volume of the JLR and the current volume, which I am happy to report is now on press. Not only would the pace of publication of Law reports of Jamaica be speeded up considerably, but so would that of other jurisdictions. We would also have been able to continue the program we began some years ago to train personnel in other jurisdictions in headnote writing skills, thus deepening the process of development and sustainability in this area of legal publishing. Instead, we continue to rely on a small overworked team from the Jamaican Bar Association assisted by young attorneys and law students to prepare headnotes for all the Law reports we have in preparation. It is little wonder that we continue to produce material, even at the admittedly slow pace that we do, and still maintain high editorial and production quality.

Outside of the areas of primary legal materials and monographs to which I have alluded, the other major potential area for development is in the area of student textbooks. However, this offers few possibilities because at every level, whether at CSEC or the advanced Caribbean Advanced Proficiency Examination (CAPE) level, as well as within the UWI Faculty of Law, because teaching is based on the basic principles of English Law, the textbooks are almost without exception those published by UK legal publishers. It would be a crazy publisher indeed who would attempt to publish rival texts to those "Bibles" currently in use. Quite apart from overcoming the hurdle of the automatic superiority that is assumed, our numbers are far too small to make such challenges cost effective. The preference for, and total domination of British texts is further reinforced by the increasing number of private students who now prepare for law degrees from UK universities, which naturally prescribe or recommend textbooks published in the UK.

The Technology Challenge

When CLP first entered the field of Law reports publishing, one of the major challenges we encountered was that of data entry because at that time most of the judgments were available only in the original handwritten version produced by the sitting judge or judges. Today, the process is more sophisticated, with most judges either using their own laptop computers – or at the very least having access to computer facilities – for the electronic preparation of their judgments. Similarly, attorneys and law librarians want to have real time access to written court judgments as exist in some jurisdictions, rather than waiting months for these judgments to appear in printed form.

If anything, legal publishers have lagged behind the younger generation of attorneys and law librarians in embracing new technologies in all their various dimensions, even though we recognize that these legal professionals are “wired” somewhat differently from persons of my generation. Those old bibliophiles among us have to face the fact that while there remains a place for the printed and bound materials we also have to provide materials and give access in new electronic formats, whether they be CD-ROMs, online on the internet, or even on mobile gadgets like cell phones. Today, the printed word is costly, time consuming to produce and expensive to transport, and print is often subject to lengthy gaps in supply.

Running the two formats and providing access on different electronic platforms is easier said than done and provides many challenges for small, independent publishers like ourselves. It requires not only substantial financial investment, but access to a range of skills and skilled personnel that are not readily available in the region. Equally challenging is the requirement to change our orientation and modes of operation. This is a difficult proposition, given that in other areas of publishing in the Caribbean the printed and bound book is still the dominant method of providing information in textual format. We do not have the luxury of large media corporations who are able to create synergies within their organizations by seamless conversion of materials across different formats as part of one production process.

Looking to the future, I believe we can, over time, eliminate the bogey of the perceived superior British product, particularly as a new generation of lawyers and legal professionals not steeped in the English traditions assume leadership positions in courts, law firms and libraries. I also believe that embracing new technologies provides our best chance to level the playing field. This is especially true given their generic nature, the constant lowering of costs of electronic resources and the rapid changes and improvements in

applications that require firms to be more adaptable and for which small operations like ours have a distinct advantage.